

NOT FOR PUBLICATION

NO. 25270

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GEORGE LACY MOORE, III, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 02-1-0076)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant George Lacy Moore, III (Moore) appeals the Judgment filed on July 25, 2002 in the Circuit Court of the Third Circuit (circuit court).¹

On appeal, Moore contends (1) the circuit court erred by denying his "Motion to Dismiss Counts I Through IV of the Indictment for Pre-Indictment Delay" (Motion to Dismiss)² and (2) he was provided with ineffective assistance of counsel.

Upon careful review of the record and the briefs submitted by the parties, we hold as follows:

¹ The Honorable Riki May Amano presided.

² In the argument in support of this contention, Moore's counsel cites to State v. Jenkins, 95 Hawai'i 199, 20 P.3d 632 (2001). Jenkins is an unpublished memorandum opinion and, as such, may not be "cited in any other action or proceeding except when the opinion or unpublished disposition order establishes the law of the pending case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same respondent." Hawai'i Rules of Appellate Procedure (HRAP) Rule 35(c). Neither of the exceptions set forth in Rule 35(c) apply in the instant case. Counsel is warned that future noncompliance with HRAP Rule 35(c) will result in sanctions against him.

(1) The circuit court did not err in denying Moore's Motion to Dismiss because Moore did not demonstrate that the delay substantially prejudiced his right to a fair trial. State v. Crail, 97 Hawai'i 170, 178, 35 P.3d 197, 205 (2001).

(2) Moore has not met his burden of establishing "1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." State v. Jones, 96 Hawai'i 161, 166, 29 P.3d 351, 356 (2001).

Therefore,

The Judgment filed on July 25, 2002 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, September 24, 2004.

On the briefs:

Robert D.S. Kim
for defendant-appellant.

Acting Chief Judge

Michael J. Udovic,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.

Associate Judge

Associate Judge